United Nations **AT**

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 917

Case No. 1018: ALI

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Chittharanjan Felix Amerasinghe; Mr. Victor Yenyi Olungu;

Whereas at the request of Ruquaya Abdul Hamid Ali, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, extended until 30 April 1998 the time-limit for the filing of an application with the Tribunal;

Whereas, on 17 April 1998, the Applicant filed an application requesting the Tribunal:

"[To find]

i. [T]hat compensation is paid for gross negligence on the part of Respondent, resulting from ignoring Applicant's health condition, and delaying termination of her services, which afflicted badly her health status.

ii. [T]hat interest be paid for amount due between the date of ignoring her health condition and the date [of] judgement.

iii. That secretarial and legal counseling fees estimated at 400 are paid."

Whereas the Respondent filed his answer on 17 August 1998;

Whereas the Applicant filed written observations on 10 December 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 21 September 1968, as a Teacher on a one-week Temporary Assistance Basis, at Falouja Girls School, Damascus area. She continued to receive further periodic appointments on a Temporary Assistance Basis in various schools through 27 October 1972, after which time she received an appointment for a fixed duration as Teacher, at the grade 4 level, at Yarmouk School, Damascus area. On 1 September 1973, she received a temporary indefinite appointment as an Area staff member in the capacity of Teacher "F" at Yarmouk School in the Syrian Arab Republic (SAR).

On 14 September 1991, the Senior Medical Officer, Yarmouk Health Centre, reported to the Area Officer, Damascus, that the Applicant had been medically examined and found unfit for duty. He recommended that she be referred to a Medical Board.

On 23 October 1991, a Medical Board examined the Applicant and concluded that she was suffering from neck pain due to mild degenerative disease in the cervical column but that she was fit for further service with the Agency. On 29 October 1991, the Field Health Officer concurred with that conclusion.

On 21 January 1992, the Senior Medical Officer, Yarmouk Health Centre, again reported to the Area Officer, Damascus, that the Applicant had been medically examined and found unfit for duty; he therefore recommended that she be referred to a medical board. On 15 March 1992, the Deputy Field Office Director signed Part I of the Medical Board Proceedings Form, requesting the Field Health Officer to convene a medical board to examine

and report on the Applicant.

On 30 June 1992, the Chairman of the Medical Board sent a memorandum to the Area Officer, Damascus, listing a number of teachers, including the Applicant, who were requested to confirm in writing whether their request to be examined by a medical board was still valid or otherwise. According to the Respondent, no such confirmation was received from the Applicant.

On 17 October 1994, the Deputy Chief, Field Health Programme, requested a physician at Yarmouk Health Centre to arrange for a medical examination of the Applicant to decide whether she should be examined by a medical board. On 9 November 1994, the Chief, Field Health Programme, reported to the Field Administration Officer that the health status of the teachers on the list attached to his memorandum, including the Applicant, had been reviewed and that they were recommended for examination by a medical board to decide their fitness for service.

On 29 December 1994, the Medical Board convened to examine the Applicant found that she was suffering from asthma, degenerative disease in her cervical column and multiple sclerosis, and that she was unable to continue her job as a teacher. The Board concluded that the Applicant was unfit for further service with the Agency.

On 14 February 1995, the Field Personnel Officer, SAR, informed the Applicant that the Medical Board found her to be unfit for further service with the Agency and that her services would be terminated for health reasons on 3 September 1995. Effective 3 September 1995, the Applicant's appointment was terminated on grounds of health, and she was paid her separation benefits, including a disability benefit, by cheque on 8 October 1995.

On 28 January 1996, the Applicant wrote to the Director of UNRWA Affairs, SAR, claiming that despite a specialist's report demonstrating that she was unfit for further duty, the Medical Board had found her fit for duty in 1992. Not until three years later, in 1995, and following the extreme deterioration of her health was she declared medically unfit for service by the Medical Board. Holding the Agency responsible for "ignoring [her] as a human being", she requested payment of the difference between the conversion of her separation

benefits into US dollars using the UN's operational rate of exchange available in January 1992 (SYP 11.20 to the US dollar) and the conversion of those benefits into US dollars at the rate of exchange in effect at the time she was declared unfit (SYP 26.60 to the US dollar). She also sought compensation for the alleged negligence of the Medical Board.

On 8 February 1996, the Field Administration Officer informed the Applicant that, because she had been separated from the Agency's service for health reasons three and a half years after the current exchange rate came into effect, her request could not be granted.

On 8 March 1996, the Applicant lodged an appeal with the Area Staff Joint Appeals Board (JAB). The JAB adopted its report on 31 July 1997. Its findings, conclusion and recommendation read, in part, as follows:

"...

20. In its deliberations, the Board dwelt on the preliminary issue of receivability of the case and resolved that it is within its competence to entertain this appeal because the Agency itself did not comply with time limits.
The time lapse between the Director's approval on 15 March 1992, and the decision of the Board which was conveyed to the Appellant on 14 February 1995, by far exceeded the three and a half months' deviation of the Appellant.

21. The Board examined all documents cited before it, including the Appellant's personal file and came out with the following:

(a) The Board noted that the Appellant was referred to two Medical Boards within three months' time. The first declared the Appellant fit for service even though she was sufffering from a degenerative disease in the cervical column.
The Appellant's health condition obviously did not substantially change during this period and yet it merited another referral for a medical board three months later. The Board is of the opinion that the first Medical Board obviously did not take the Appellant's health condition seriously.

(b) Approval for the convening of the second Medical Board came on 15 March 1992. However the Medical Board did not take up the Appellant's case until 17 October 1994, 31 months after the Director's

approval on the pretext that it did not receive confirmation from the Appellant.
After examining the Appellant's personal file, the Board found no evidence in the file that the Appellant had been aware of the contents of the letter of the chairman of the Medical Board dated 30 June 1992. The Board would like to cite its reservations regarding the letter from Area Education Officer dated 17 June 1996 wherein he referred to the said letter and stated that the Appellant was informed in due time i.e. four years ago.
It is to be noted that the Appellant had never requested a Medical Board but was always referred by the Senior Medical Officer due to her bad health condition. The Board is of the opinion that there was negligence in handling the Appellant's case which led to a deteriorating condition of the Appellant's health particularly when one bears in mind that she was suffering from a degenerative disease.

(c) By reference to the second Medical Board's Report that convened on 29 December 1994, the Appellant suffered from asthma, and since 1992 from degenerative disease in the cervical column and multiple sclerosis (...). The Board here would like to question why the Appellant was declared fit at the first Medical Board knowing then that she was suffering from a degenerative disease. Moreover, how is it possible for a person who suffers from 'severe contractions in the vertebras of her neck which prevents her from raising her right hand or using it normally ... ringing in her ears, dizziness and hearing impairment' as described by Senior Medical Officer on 15 April 1992 (...) to be fit as a teacher.

(d) The Board also noted that the signatures on the Report did not follow a chronological order. The Board members signed it on 29 December 1994. The Chief Field Health Programme signed it on 1 May 1995, and Administration signed it 23 January 1995. The Board furthermore noted that it took the Chief Field Health Programme five months to sign this Medical Report.

(e) In this context, the Board is of the opinion that there was extreme negligence in handling the Appellant's health condition. The first Medical Board did not take the Appellant's health condition seriously. The time lapse between the initiation of the second Medical Board and the implementation of the recommendation took thirty one months despite the fact that the Appellant suffered from a degenerative disease.

exchange rate of 11.20 pounds for each dollar and that you be compensated for negligence in handling your health condition.

As there is no contemporaneous record of you having received notification of the requirement that you confirm that you wanted to be examined by a Medical Board in 1992, I have accepted the Board's recommendation regarding the applicable exchange rate and allow your appeal to that extent. However, I have not accepted the Board's conclusions and recommendations regarding compensation. In relation to the Medical Board of December 1991, there is no medical evidence that you were unfit for duty at that time and it is improper for the Joint Appeals Board to substitute its opinion for that of the Medical Board on a purely medical issue. In relation to the failure to examine you in 1992, as you were kept in full time employment as a result of the Agency's failure to convene a Board and continued working without objection, there is no obvious basis upon which you should be granted further monetary compensation for a purely procedural error which, by my acceptance of the Board's primary recommendation, has been rectified. Similarly, the procedural errors concerning your examination in 1994 did not lead to any compensatable consequences.

In accordance with area staff rule 111.3(12), a copy of this letter and the Board's report will be sent to the local Staff Union from SAR thirty days after receipt of this letter by you. Kindly inform the Administration within this period if you object to a copy being sent to the Staff Union."

On 17 April 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant should have been found unfit for duty when the first Medical Board examined her in 1991. The determination declaring the Applicant fit for service amounts to a "professional failure" by the Medical Board, calling for compensation.

2. The Applicant should further be compensated for the Respondent's negligence in having failed to have a new Medical Board convened for 33 months after the Senior Medical Officer determined in January 1992, that the Applicant was unfit for service and recommended that she "be referred [to] a medical board".

Whereas the Respondent's principal contentions are:

1. The Applicant has the sole responsibility for her own health. Therefore, there is no basis upon which the Respondent can be said to have "ignored the Applicant's health condition" or "delayed the termination of her services".

2. There is no evidence that the Applicant was unfit for duty in the period 1991 through December 1994, when it was finally determined that she was unable to continue her job as a teacher by a medical board.

The Tribunal, having deliberated from 2 to 23 July 1999, now pronounces the following judgement:

I. In her appeal before the JAB, the Applicant disputed the exchange rate used by the Respondent in calculating her separation benefits. She also sought compensation for the alleged negligence of the Medical Board. The Respondent accepted the recommendation of the JAB that the Applicant's separation benefits be calculated according to the exchange rate she had requested. The principal issue raised in her application is whether additional compensation should be paid to her, as she claims, "for gross negligence on the part of the Respondent, resulting from ignoring Applicant's health condition, and delaying termination of her services, which affected badly her health status".

II. The first Medical Board had found in October 1991 that the Applicant was fit for service. Then, in January 1992, the Senior Medical Officer reported that the Applicant was unfit for service. In a memorandum dated 30 June 1992, the Chairman of the Medical Board asked the Area Officer, Damascus, to seek confirmation, in writing, from a list of teachers, including the Applicant, as to whether their requests to be examined by a medical board were still valid. The Respondent claims that no confirmation was received from the Applicant, and

that consequently, any delay was the fault of the Applicant. The Applicant claims that she never received any request for such confirmation. The Tribunal notes that it was the Applicant who wanted her service terminated on medical grounds at this point and it is difficult to accept that, if the Applicant had been made aware of the need to confirm in writing her request to be examined by a medical board, she would have failed to do so. There is in addition no evidence of any bad faith on the part of the Applicant. The Tribunal accepts the Applicant's claim that she never received the appropriate communication at issue. Thereafter, it took the Respondent approximately 2 ½ years to convene a medical board to examine the Applicant and decide to release her from service on medical grounds.

III. The Tribunal has held that undue delay in taking an administrative decision is a procedural irregularity which adversely affects the administration of justice (cf. Judgements No. 310, Estabial (1983), No. 353, El-Bolkany (1985), and No. 784, Knowles (1996)). In the present case the Tribunal holds that the delay of more than 2 ½ years in reconvening a medical board constituted a procedural irregularity. Even though the ultimate decision favoured the Applicant, the undue delay in taking that decision violated the Applicant's right to a timely review of her case by a medical board. It is irrelevant whether or not the decision in 1992 would have been in the Applicant's favour. It is the delay in addressing the problem and taking a decision that is being faulted.

IV. The violation of the Applicant's procedural rights is in itself adequate moral injury which warrants compensation (cf. Judgements No. 702, Beg (1995), and No. 774, Stepczynski (1996)). However, in addition to this kind of moral injury, the Applicant underwent the hardship of having to work while in poor health. The Applicant might have been relieved of such hardship, had her problem been addressed in a timely manner. This, too, warrants compensation. On the other hand, the Applicant has no claim for financial loss, since she was paid a salary.

V. The Applicant also claims that the first Medical Board, convened in 1991, erred in its decision finding her fit for service. The Tribunal notes that the findings of a medical board, as an expert advisory body, are subject to a more limited review, since such findings are based on the technical medical knowledge of the Board's members. (Cf. Judgements No. 587, Davidson (1993), and No. 624, Muhtadi (1993)). Furthermore, the decision by the Commissioner-General to accept the recommendation of the Medical Board was an administrative decision of a discretionary nature. The Tribunal can only review such a decision if it is tainted by abuse of discretion, and can only review a medical board's recommendation if there is evidence of improper motive or some substantive or procedural irregularity. Substantive irregularities include errors of law, errors of fact, failure to take account of relevant facts, taking into account irrelevant facts, clearly mistaken conclusions (erreur manifeste d'appréciation) or general arbitrariness. Procedural irregularities include undue delay or lack of due process. (Cf. Judgements No. 814, Monteleone-Gilfillian (1997), No. 815, Calin (1997), No. 847, Wyss (1997), No. 882, Ossolo (1998), and No. 899, Randall (1998)).

VI. In its Judgement No. 210, Reid (1976), paragraph IV, the Tribunal has held that, with regard to the exercise of discretionary powers, it cannot substitute its own judgement for that of the Administration and that it is "competent to review the Respondent's decision if such decision is based on a mistake of facts or is arbitrary or is motivated by prejudice or by other extraneous considerations". (See also Judgement No. 792, Rivola (1996)). In the present case, no evidence has been adduced that the administrative decision or the recommendation of the Medical Board on which it was based suffered from any such defects. The Applicant alleges that the Medical Board did not take its job seriously which, if proved, could constitute a substantive irregularity. The Applicant, however, has not provided any evidence to support such a claim.

VII. For the violation of the Applicant's rights by the procedural irregularity of undue delay and for the hardship and suffering caused the Applicant, as a result of the delay, the Tribunal decides that the Applicant should be compensated with three months' salary.

VIII. For the foregoing reasons, the Tribunal:

(i) Orders that the Applicant be paid three months of her net base salary at the rate in effect on the date of separation; and

(ii) Rejects all other pleas.

(Signatures)

Hubert THIERRY
President

Chittharanjan Felix Amerasinghe
Member

Victor YENYI OLUNGA
Member

Geneva, 23 July 1999

Maritza STRUYVENBERG
Executive Secretary